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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648-XC317

Notice of Availability of the Deepwater Horizon Oil Spill Louisiana Trustee Implementation Group Final Phase II Restoration Plan: #3.2: Mid-Barataria Sediment Diversion

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act of 1969 (NEPA); the Final Programmatic Damage Assessment Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS) and Record of Decision; and the Consent Decree, the *Deepwater Horizon* (DWH) Federal and State natural resource trustee agencies for the Louisiana Trustee Implementation Group (Louisiana TIG) prepared the Final Phase II Restoration Plan #3.2: Mid-Barataria Sediment Diversion (Final Phase II RP #3.2). The Final Phase II RP #3.2 presents the Louisiana TIG's OPA evaluation of a proposed 75,000 cubic feet per second (cfs) capacity Mid-Barataria sediment diversion (i.e., Alternative 1, the Proposed MBSD Project) and five alternatives to help restore natural resources and ecological services injured or lost as a result of the DWH oil spill. The Louisiana TIG evaluated these alternatives under criteria identified in the Final Phase II RP #3.2, including those set forth in the OPA natural resource damage assessment regulations. In accordance with NEPA, the environmental consequences of the MSBD alternatives are evaluated in the associated U.S. Army Corps of Engineers, New Orleans District (USACE CEMVN) *Final Environmental Impact Statement for the Proposed Mid Barataria Sediment*

Diversion Project, Plaquemines and Jefferson Parishes (MBSD FEIS). The Louisiana TIG Federal Trustees participated as cooperating agencies in the preparation of the MBSD FEIS. The purpose of this notice is to inform the public of the availability of the Final Phase II RP #3.2, the Louisiana TIG's selection of Alternative 1 as its preferred alternative, and following adoption of the MBSD FEIS, the Louisiana TIG's intention to make an OPA NRDA decision regarding implementation of the preferred alternative.

ADDRESSES: *Obtaining Documents*: You may download the Final Phase II RP #3.2 at: *http://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana*. The associated MBSD FEIS may be downloaded at: *http://www.mvn.usace.army.mil/Missions/Regulatory/Permits/Mid-Barataria-Sediment-Diversion-EIS/*.

FOR FURTHER INFORMATION CONTACT: National Oceanic and Atmospheric Administration – Mel Landry, NOAA Restoration Center, (301) 427-8711, *gulfspill.restoration@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

On April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon*, which was being used to drill a well for BP Exploration and Production, Inc. (BP) in the Macondo prospect (Mississippi Canyon 252–MC252), experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The DWH oil spill is the largest offshore oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days. In addition, well over one million gallons of dispersants were applied to the waters of the spill area in an attempt to disperse the spilled oil. An undetermined amount of natural gas was also released into the environment as a result of the spill.

The DWH Federal and State natural resource trustees (DWH Trustees) conducted the natural resource damage assessment (NRDA) for the DWH oil spill under OPA (33 U.S.C. 2701 *et seq*.). Pursuant to OPA, Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship, including the loss of use and services from those resources from the time of injury until the time of restoration to baseline (the resource quality and conditions that would exist if the spill had not occurred) is complete.

The DWH Trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Environmental Protection Agency (EPA);
- State of Louisiana Coastal Protection and Restoration Authority (CPRA), Oil Spill Coordinator's Office (LOSCO), Department of Environmental Quality (LDEQ), Department of Wildlife and Fisheries (LDWF), and Department of Natural Resources (LDNR);
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and

- State of Texas: Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

The DWH Trustees reached and finalized a settlement of their natural resource damage claims with BP in an April 4, 2016 Consent Decree approved by the United States District Court for the Eastern District of Louisiana. Pursuant to that Consent Decree, restoration projects in the Louisiana Restoration Area are selected and implemented by the Louisiana TIG. The Louisiana TIG is composed of the following Trustees: CPRA; LOSCO; LDEQ; LDWF; LDNR; NOAA; DOI; EPA; and USDA.

Background

The DWH oil spill resulted in the oiling of more than 1,100 kilometers of wetlands, nearly all of which were located in coastal Louisiana. The heaviest oiling occurred in the Barataria Basin, resulting in substantial injuries to natural resources in the basin. The impact of those injuries was intensified by the fragile nature of the basin. Already suffering from significant coastal erosion, marshes in the Barataria Basin that experienced heavy oiling subsequently experienced double or triple the rate of marsh loss. Recognizing that the resulting loss of marsh productivity affected resources throughout the northern Gulf of Mexico ecosystem, the State of Louisiana and the federal Trustees that negotiated the DWH Natural Resource Damages settlement allocated $4 billion, almost half of the total settlement amount, to restoring Louisiana's wetland, coastal, and nearshore habitats.

The DWH NRDA Trustees began analyzing strategies for restoring those coastal losses that resulted from the DWH oil spill beginning as part of the settlement process and leading to the preparation of the Deepwater Horizon Oil Spill: Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS, DWH NRDA Trustees, 2016). To address the large-scale impacts, they agreed that "[d]iversions of Mississippi River water into

adjacent wetlands have a high probability of providing these types of large-scale benefits for the long-term sustainability of deltaic wetlands" (DWH NRDA Trustees, 2016, page 5-25).

Building on the Final PDARP/PEIS, the Louisiana TIG began evaluating restoration strategies that could restore for injuries to natural resources in the Barataria Basin, which resulted in the Strategic Restoration Plan and Environmental Assessment #3: Restoration of Wetlands, Coastal, and Nearshore Habitats in the Barataria Basin, Louisiana (SRP/EA #3).

In the SRP/EA #3, the LA TIG ultimately determined that a combination of "marsh creation and ridge restoration plus a large-scale sediment diversion would provide the greatest level of benefits to injured Wetlands, Coastal, and Nearshore Habitats and to the large suite of injured resources that depend in their life cycle on productive and sustainable wetland habitats" (LA TIG, 2018, page 3-32) in the basin and in the broader northern Gulf of Mexico.

Since finalizing the SRP/EA #3, the Louisiana TIG has evaluated a variety of potential alternatives for a large-scale sediment diversion in the Barataria Basin. This Final Phase II RP #3.2, along with the MBSD FEIS released simultaneously by the USACE CEMVN, set forth the results of that evaluation.

Overview of the Louisiana TIG Final Phase II RP #3.2

The Final Phase II RP #3.2 is being released in accordance with NRDA regulations for restoration planning under OPA in 15 CFR part 990, NEPA (42 U.S.C. 4321 *et seq.*), the Consent Decree, and the Final PDARP/PEIS. The structural features of the Proposed MBSD Project and its alternatives are located in south Louisiana on the west bank of the Mississippi River at River Mile (RM) 60.7, just north of the Town of Ironton. The anticipated outfall area for sediment, freshwater, and nutrients conveyed from the river is located within the Mid-Barataria Basin. The area of the Proposed MBSD

Project and its alternatives includes the hydrologic boundaries of the Barataria Basin and the lower Mississippi River Delta Basin, also known as the birdfoot delta. The Mississippi River itself, beginning near RM 60.7 and extending to the mouth of the river, is also included in the Proposed MBSD Project area.

In the Final Phase II RP #3.2, the Louisiana TIG selects its preferred alternative under the DWH Louisiana Restoration Area Wetlands, Coastal and Nearshore Habitats restoration type. The preferred alternative (Alternative 1) consists of a controlled sediment and freshwater intake diversion structure in Plaquemines Parish on the right descending bank of the Mississippi River at RM 60.7. The preferred alternative would have a maximum diversion flow of 75,000 cfs, which would occur when the Mississippi River gauge at Belle Chase reaches 1,000,000 cfs or higher. The diversion would operate at up to 5,000 cfs (base flow) when the river is below 450,000 cfs at Belle Chase; at river flows above 450,000 cfs, the diversion would be opened fully. At the downstream end of the diversion channel, an engineered "outfall transition feature" would be constructed to guide and disperse the channel flow into the Barataria Basin. The preferred alternative is projected to increase land area, including emergent wetlands and mudflats, in the Barataria Basin across the 50-year analysis period relative to natural recovery, with a maximum increase of 17,300 acres in 2050, at the approximate mid-point of the 50-year analysis period.

The cost of the Proposed MBSD Project at the time of the Draft Phase II RP #3.2 was anticipated to be approximately $2 billion. Since the publication of the Draft Phase II RP #3.2, substantial increases in the general inflation rate as well as corresponding increases to most cost components of the Proposed MBSD Project, including but not limited to construction materials, construction activities, and wages, have occurred. CPRA has experienced an average 25% increase in costs on its recent restoration projects. If selected for implementation, CPRA will not know the amount of the cost

increase for the Proposed MBSD Project until it completes negotiations for a Guaranteed Maximum Price for project construction with the Construction Management At Risk contractor. Those negotiations will not begin until after the publication of this Final Phase II RP #3.2. In light of this uncertainty as to total project costs, the Louisiana TIG intends to limit its contribution to the overall project costs to $2.26 billion if it is selected for implementation. This would help ensure that DWH settlement funding would be available to construct all projects currently under consideration as well as for future large-scale wetlands, coastal, and nearshore habitat restoration projects not yet proposed. The cap would also ensure that planned DWH payments to the Louisiana TIG would be sufficient to cover project costs as it continues to be designed and implemented. To ensure the Monitoring and Adaptive Management (MAM) and Mitigation and Stewardship Plans are fully funded, the Louisiana TIG's contribution would cover the majority of MAM associated costs (a NRDA investment of up to $148,800,000, including contingency funding) and the Mitigation and Stewardship costs (currently estimated at $378,000,000, including contingency funding). A portion of the engineering and design costs has been paid by the National Fish and Wildlife Federation's Gulf Environmental Benefit Fund. The remaining Louisiana TIG contribution would be applied toward other project cost categories. CPRA has committed to providing funding for all costs that exceed the Louisiana TIG's funding cap of $2,260,000,000.

The Louisiana TIG fully evaluated a smaller-capacity diversion with a maximum capacity of 50,000 cfs (Alternative 2). The Trustees found that such a diversion would provide substantially less benefit in marsh preservation and restoration, with only a small reduction in adverse impacts and a slight cost reduction.

The Louisiana TIG also fully evaluated a larger-capacity diversion with a maximum capacity of 150,000 cfs (Alternative 3). While the marsh creation benefits of

such a large diversion would be significantly greater, the collateral injuries would also increase to levels unacceptable to the Trustees.

Three other alternatives (Alternatives 4–6) would divert the same flow (cfs) capacities as described above for Alternatives 1–3, and would include marsh terrace outfall features. While providing some benefits, the outfall feature alternatives do not substantially change the extent to which the corresponding alternatives with similar capacities and without terraces meet the Louisiana TIG's goals and objectives for the project.

While the Louisiana TIG has rejected the No-Action-Alternative for this Final Phase II RP #3.2, the OPA analysis provided in Chapter 3 integrates information about the MBSD FEIS No-Action Alternative (40 CFR 1502.14(c)) because it provides a baseline against which the benefits and collateral injuries of the Proposed MBSD Project and its alternatives can be compared.

The Louisiana TIG is committed to continuing efforts to restore the resources that would be adversely affected by the Proposed MBSD Project if selected for implementation, many of which were also injured by the DWH oil spill. The Proposed MBSD Project includes a MAM Plan and a Mitigation and Stewardship Plan. The Project also now includes a Marine Mammal Intervention Plan, which was developed in response to public comments. These plans serve as an integral part of the proposed restoration action. The MAM Plan includes (1) methods for specific types of monitoring, (2) key performance measures/indicators for assessing the success of the Proposed MBSD Project in meeting its objectives, and (3) decision criteria and processes for modifying ("adapting") current or future management actions. The Mitigation and Stewardship Plan includes actions to help to address collateral impacts of construction and operation of the Proposed MBSD Project. The Marine Mammal Intervention Plan outlines a spectrum of potential response actions for dolphins affected by the operation of the Proposed MBSD

Project, ranging from recovery/relocation to no intervention to euthanasia. As part of the Project, CPRA would have responsibility for ensuring implementation of the measures outlined in each of these Plans.

The Louisiana TIG has examined the injuries assessed by the DWH Trustees and evaluated restoration alternatives to address the injuries. In Final Phase II RP #3.2, the Louisiana TIG presents to the public its plan for providing partial compensation to the public for injured natural resources and ecological services in the Louisiana Restoration Area. The preferred alternative is intended to continue the process of using DWH restoration funding to restore natural resources injured or lost as a result of the DWH oil spill. Additional restoration planning for the Louisiana Restoration Area will continue irrespective of whether the preferred alternative is selected for implementation.

Trustees typically choose to combine a restoration plan and the required NEPA analysis into a single document (33 CFR 990.23(a), (c)(1)). In this case, the Final Phase II Restoration Plan #3.2 does not include integrated NEPA analysis. This is because prior to evaluation of the Proposed MBSD Project by the Louisiana TIG as a restoration project under OPA, the USACE CEMVN initiated scoping for the MBSD Project EIS based on a permit application for the Project by CPRA. In this case, to increase efficiency, reduce redundancy, and be consistent with Federal policy and 40 CFR 1506.3, the four Federal Trustees in the Louisiana TIG decided to participate as cooperating agencies in the development of a single MBSD EIS. As the lead agency, the USACE CEMVN has primary responsibility for preparing the MBSD EIS (40 CFR 1501.5(a)). The Louisiana TIG is relying on the MBSD Final EIS to evaluate potential environmental effects of the MBSD Project and its alternatives evaluated in this Final Phase II RP #3.2.

The Louisiana TIG solicited public comment on the Draft Phase II RP #3.2 for a total of 90 days between March 5, 2021 and June 3, 2021 (86 FR 12915, March 5, 2021). Three public meetings were held during the comment period. This period ran

concurrently with the USACE CEMVN public comment period on the MBSD DEIS. Following the comment period, the 40,699 comment submissions received were reviewed by the Louisiana TIG and taken into consideration in the preparation of this Final Phase II RP #3.2. The Final Phase II RP #3.2 includes a summary of the comments received and responses to those comments.

Next Steps

Following publication of the Louisiana TIG's Final Phase II RP #3.2 and the USACE CEMVN's MBSD FEIS, conclusion of the NEPA 30-day wait period, and issuance of the Louisiana TIG's Record of Decision, the Louisiana TIG intends to finalize its decision (15 CFR § 990.23(c)(2)(ii)(G)) and document such by Louisiana TIG Resolution. Until that time, the Louisiana TIG would not have made a final decision on the proposed Project on the proposed Project.

Additional Access to Materials

You may request a CD of the Final Phase II RP #3.2 (see **FOR FURTHER INFORMATION CONTACT** above). Copies of the Final Phase II RP #3.2 and MBSD FEIS are also available at the following locations:

Repositories with Paper and Electronic Copies (USB Drives) of the Final Phase II RP #3.2 and MBSD Final EIS; Executive Summaries of Both Are Available in English, Vietnamese and Spanish			
Repository	Address	City	ZIP Code
Jefferson Parish Library, Lafitte Library	4917 City Park Drive	Lafitte	70067
Jefferson Parish Library, West Bank Regional Library	2751 Manhattan Boulevard	Harvey	70058
New Orleans Public Library, East New Orleans Regional Library	5641 Read Boulevard	New Orleans	70127
Plaquemines Parish Public Library, Belle Chasse Library	8442 Highway 23	Belle Chasse	70037
Plaquemines Parish Public Library, Port Sulphur Library	139 Civic Drive	Port Sulphur	70083

Repositories with Paper and Electronic Copies (USB Drives) of the Final Phase II RP #3.2 and MBSD Final EIS; Executive Summaries of Both Are Available in English, Vietnamese and Spanish			
Repository	Address	City	ZIP Code
Plaquemines Parish Public Library, Buras Library	35572 Highway 11	Buras	70041
Lafourche Parish Public Library, Larose Library	305 East Fifth Street	Larose	70373
Lafourche Parish Public Library, South Lafourche Branch	16241 East Main Street	Cut Off	70345
St. Charles Parish Library, Paradis Branch	307 Audubon Street	Paradis	70080
St. Tammany Parish Library	310 West 21st Avenue	Covington	70433
Terrebonne Parish Library	151 Library Drive	Houma	70360
New Orleans Public Library	219 Loyola Avenue	New Orleans	70112
East Baton Rouge Parish Library	7711 Goodwood Boulevard	Baton Rouge	70806
Jefferson Parish Library, East Bank Regional Library	4747 West Napoleon Avenue	Metairie	70001
St. Bernard Parish Library	2600 Palmisano Boulevard	Chalmette	70043
St. Martin Parish Library	201 Porter Street	St. Martinville	70582
Alex P. Allain Library	206 Iberia Street	Franklin	70538
Vermillion Parish Library	405 East Saint Victor Street	Abbeville	70510
Martha Sowell Utley Memorial Library	314 Saint Mary Street	Thibodaux	70301
Calcasieu Parish Public Library Central Branch	301 West Claude Street	Lake Charles	70605
Iberia Parish Library	445 East Main Street	New Iberia	70560
Mark Shirley, Louisiana State University Agricultural Center	1105 West Port Street	Abbeville	70510
Simi Kang, Coastal Communities Consulting	324 North Avenue	Pittsburgh, PA	15209
Grand Bayou Indian Village Tribal Center	P.O. Box 1021	Port Sulphur	70083
Coalition to Restore Coastal Louisiana	3801 Canal Street, Suite 325	New Orleans	70119
Coastal Communities Consulting, Inc.	925 Behrman Highway, Suite 15	Gretna	70056

Repositories with Paper and Electronic Copies (USB Drives) of the Final Phase II RP #3.2 and MBSD Final EIS; Executive Summaries of Both Are Available in English, Vietnamese and Spanish			
Repository	Address	City	ZIP Code
Greater New Orleans Foundation	919 Saint Charles Avenue	New Orleans	70130
Gulf Restoration Network	330 Carondelet Street, Suite 300	New Orleans	70130
South Louisiana Wetlands Discovery Center	7910 Park Avenue	Houma	70364
Lower Ninth Ward Center for Sustainable Engagement and Development	5227 Chartres Street	New Orleans	70117
Mary Queen of Vietnam Community Development Corporation, Inc.	4626 Alcee Fortier Boulevard # E	New Orleans	70129
United Houma Nation	20986 Highway 1	Golden Meadow	70357
Zion Travelers Cooperative Center	120 Thomas Lane	Braithwaite	70040

Translation Opportunities

The Executive Summary of the Final Phase II RP #3.2 is available in Vietnamese and Spanish from the Louisiana TIG website at: http://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana. Vietnamese and Spanish translations of materials prepared for the public review of the MBSD DEIS and Draft Phase II RP #3.2 remain available on USACE CEMVN's project webpage. Pre-recorded presentations from the MBSD DEIS and Draft Phase II RP #3.2 public meetings also remain available on USACE CEMVN's project webpage. The recordings are available in English, Vietnamese, Khmer, and Spanish.

Administrative Record

The documents comprising the Administrative Record for the Final Phase II RP #3.2 can be viewed electronically at *http://www.doi.gov/deepwaterhorizon/adminrecord*.

Authority

The authority of this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq*.) and its implementing Oil Pollution Act Natural Resource Damage Assessment regulations found at 15 CFR part 990 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq*.).

Dated: September 19, 2022.

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National Marine Fisheries Service.

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